

## § 779.115

### § 779.115 Watchmen and guards.

Watchmen or guards employed by retail businesses who protect the warehouses, workshops, or store premises where goods moving in interstate or foreign commerce are kept or where goods are produced for such commerce, are covered under the Act.

### § 779.116 Custodial and maintenance employees.

Custodial and maintenance employees who perform maintenance and custodial work on the machinery, equipment, or premises where goods regularly are produced for commerce or from which goods are regularly shipped in interstate commerce are engaged in covered activities.

### § 779.117 Salesmen and sales clerks.

A salesman or a sales clerk who regularly and recurrently takes orders for, or sells, or selects merchandise for delivery to points outside the State or which are to be shipped or delivered to a customer from a point outside the State, i.e. drop shipments; or who wraps, packs, addresses or otherwise prepares goods for out-of-State shipments is performing covered activities.

### § 779.118 Employees providing central services for multi-unit organizations.

Employees providing central services for a multiunit organization may be engaged both "in commerce" and "in the production of goods for commerce" within the meaning of the Act. For example, employees engaged in work relating to the coordinated purchasing, warehousing and distribution (and in the administrative and clerical work relating to such activities) for various retail units of a chain are covered under the Act. (See *Phillips Co. v. Walling*, 324 U.S. 490; *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, affirming, 128 F. 2d 935 (CA-5); *Mitchell v. C. & P. Stores*, 286 F. 2d 109 (CA-5); *Mitchell v. E. G. Shinner & Co., Inc.*, 221 F. 2d 260 (CA-7); *Donovan v. Shell Oil Co.*, 168 F. 2d 776 (CA-8).) In addition, employees who regularly and recurrently correspond and maintain records of activities of out-of-State stores and such employees as traveling auditors, inventory men, window display men, etc., who regu-

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larly travel from State to State in the performance of their duties are covered under the Act. (See *Mitchell v. Kroger Co.*, 248 F. 2d 935 (CA-8).)

### § 779.119 Exempt occupations.

Of course, it should be noted that although employees may be engaged in commerce or in the production of goods for commerce within the meaning of the Act, they may be exempt from the Act's minimum wage or overtime provisions (or both). For a complete list of such exemptions the Act should be consulted. Those exemptions, however, which are of particular interest to employers and employees in the retail field are discussed in subparts D, E, and F of this part.

## Subpart C—Employment to Which the Act May Apply; Enterprise Coverage

### ENTERPRISE; THE BUSINESS UNIT

### § 779.200 Coverage expanded by 1961 and 1966 amendments.

The 1961 amendments for the first time since the enactment of the Fair Labor Standards Act of 1938 provided that all employees in a particular business unit are covered by the Act. Prior to the 1961 amendments each employee's coverage depended on whether that employee's activities were in commerce or constituted the production of goods for commerce. All employees employed in an "enterprise" described in section 3(s)(1) through (5) of the Act as it was amended in 1961 and section 3(s)(1) through (4) of the Act as amended in 1966 are also covered. Thus, it is necessary to consider the meaning of the term "enterprise" as used in the Act.

### § 779.201 The place of the term "enterprise" in the Act.

The term "enterprise" is defined in section 3(r) of the Act and, wherever used in the Act, is governed by this definition. (§ 779.21(a) provides that portion of the definition of "enterprise" which is pertinent with respect to retail and service enterprises.) The term is a key in determining the applicability of the Act to these businesses.